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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942.

No. 476.

AMERICAN INSURANCE COMPANY, ET AL., PETITIONERS,

vs.

EDWARD L. SCHEUFLER (SUCCESSOR), SUPERINTENDENT OF THE INSURANCE DEPARTMENT OF THE STATE OF MISSOURI, ET AL., RESPONDENTS.

OPPOSING BRIEF OF RESPONDENT EDWARD L. SCHEUFLER (SUCCESSOR) SUPERINTENDENT OF THE INSURANCE DEPARTMENT OF THE STATE OF MISSOURI.

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INDEX.

	Page
Introduction	1
Statement	2-11
Motion for Citation to Show Cause	5
Restoration and show cause orders issued	7
Answers to show cause order	8
Motion to strike	8
Summary of the argument	11-15
Argument	15-30
I. Petitioners' points "Relied upon for reversal in the C. C. A. presented nothing for review in that Court". Therefore, they may not urge any reasons herein as grounds for certiorari	15
II. Petitioners not entitled to relief which they did not ask in lower courts. The fairness of the rates could not be litigated in this proceeding, but the prior rates have been sustained in both federal and state courts. Court could only determine issues as framed by pleadings in show cause proceeding upon which petitioners had fair trials. Show cause proceeding was proper and afforded petitioners due process. There is no conflict between this case and United States vs. Morgan, 307 U. S. 183	22
III. Conflict with cases of other circuits	27
IV. Implied knowledge	28
V. Unclean hands maxim	30
Conclusion	31

TABLE OF CASES

Aetna vs. Hyde, 275 U. S. 440 (Rec. Vol. A-8)	2, 13, 23
Aetna vs. Hyde, 34 Fed. (2d) 185	2, 13, 23
Aetna vs. Hyde, 315 Mo. 113, 285 S. W. 65	2, 13, 23
American Constitution Fire Assur. Co. vs. O'Malley, 342 Mo. 138, 113 S. W. (2d) 795	3, 4, 23
American Constitution Fire Assur. Co. vs. O'Malley, 342 Mo. 139, 113 S. W. (2d) 795	13
American Insurance Co. vs. Lucas, 314 U. S. 575, 62 S. Ct. 107, 86 L. Ed. 55	2, 23
American Insurance Co. vs. Lucas, 38 F. Supp. 896, 926	9 (2)

This (2) beside a page number means there are two references to this case on the same page.

Page

American Surety Co. vs. Fisher Warehouse Co., 88 F (2d) 536 (C. C. A. 8) 18
Angle vs. N. W. Mutual, 92 U. S. 330, 342 30
Art Metal Works vs. Abraham and Straus, 107 Fed. (2d) 944, 70 Fed. (2d) 641 27
Associated Press vs. International News Service, 240 Fed. 983 .. 27
Bank of Havelock vs. Western Union Telegraph Co., 141 Fed. 522 (C. C. A. 8) 29
Bank of the United States vs. Moss, et al., 47 U. S. 31, (l. c. 39) .. 24
Blatt (M. E.) Co. vs. United States, 305 U. S. 267, 277 ..... 16, 17
Burnett vs. Commonwealth Improvement Co., 287 U. S. 415, (l. c. 418) 21
Callner vs. Greenberg, 376 Ill. 212, 33 N. E. 437, 134 A. L. R. 1485 26
Currin vs. Nourse, 74 F. (2d) 273 (C. C. A. 8) 18
Delaware, Lackawana and Western Railroad Co. vs. Koske, 279 U. S. 7 (l. c. 10) 21
Duncan vs. Jaudon, 82 U. S. 165 29
Eastman Kodak Co. of New York vs. Southern Photo Materials Co., 273 U. S. 359 19
(Also same case—l. c. 369) 20
Fisher vs. Simon, et al., 67 Fed. 487 25
Ford Motor Co. vs. Brady, 73 F. (2d) 248 (C. C. A. 8) 16, 17
Geyser-Marion Gold Min. Co. vs. Stark, 106 Fed. 558, (l. c. 562) .. 30
Gluck vs. Rynda Development Co., 99 N. J. Eq., 788, 134A 363, 366, affirmed 100 N. J. Eq., 554, 135 A 917 30
Hanna vs. Brictson N. F. G. Co., 62 Fed. (2d) 139, 148 (C. C. A. 8) 25
Hedman Mfg. Co. vs. Todd Protectograph Co., 265 Fed. 273 27
Hines (Edward) Yellow Pine Trustees vs. Martin, 268 U. S. 458, (l. c. 465) 21
I. T. S. Rubber Co., vs. Essex Rubber Co., 272 U. S. 429, (l. c. 431-432) 19, 20
Jones vs. Futrall, 75 F. (2d) 418 (C. C. A. 8) 16 (2)
Kem Products Co. vs. Levin, et al., 117 N. J. Eq. 560, 177 Atl. 77, l. c. 79 30
Killean vs. Maryland Casualty Co., 112 Fed. (2d) 940, 944 (C. C. A. 10) 26
King vs. Worthington, 104 U. S. 44 18
Little, et al., vs. Cunningham, et al., 116 Mo. App. 545, 92 S. W. 734, (l. c. 736) 30
McClure vs. Township of Oxford, 94 U. S. 429 29
Marshall vs. Holmes, 141 U. S. 589, 599, 600 25
Mishawaka, St. Joseph Loan and Trust Co., et al., vs. Neu, et al., 209 Ind. 433, 196 N. E. 85 30
National Fire Ins. Co. vs. Thompson, 281 U. S. 331 ..... 2, 13, 23
National Surety Co. vs. State Savings Bank, 156 Fed. 21 (C. C. A. 8) 29
Neblett vs. McFarland, 92 U. S. 101 26
New England Oil Refining Co., 9 F. (2d) 344, 346 (C. C. A. 1) .. 25 (2)
Sea Board Air Line Ry. vs. Watson, 287 U. S. 86 18

Page

Shaw vs. Aaron W. Spencer, et al., 100 Mass. 382 (l. c. 390).... 30
Shell Petroleum Corp. vs. Corn, et al., 54 Fed. (2d) 7767 (C. C. A. 10)..... 29
Sonzinsky vs. United States, 300 U. S. 506, (l. c. 514)..... 21
Squibb (E. R.) and Sons vs. Mallinckrodt Chemical Works, 69 F. (2d) 685; certiorari denied, 295 U. S. 759, and certification of rule question to this Court in same case, 293 U. S. 190, quoted from in Point I-(2)..... 16, 17, 19, 20
Stone vs. United States, 164 U. S. 380, 383..... 16, 17
The Lulu, 77 U. S. 192..... 28
Union Guardian Trust vs. Schram, 123 Fed. (2d) 579, p. 581... 30
United States, ex rel., Fisher vs. Williams, 67 F. 384 (C. C. A. 8—l. c. 386)..... 25 (2)
United States vs. Morgan, 307 U. S. 183..... 12, 14, 26
United States vs. Porter Fuel Co., 247 F. 769, 770, (C. C. A. 8).. 16, 17
United States vs. Shoshone Tribe of Indians, 304 U. S. 111, 115.. 16, 17
United States vs. Sterling, 70 F. (2d) 708, 711 (C. C. A. 2) certiorari denied sub. nom. Commercial Trust Co. vs. United States, 293 U. S. 584..... 25 (2)
United States vs. Thogmartin, 98 U. S. 61..... 26
Vulcan Detinning Co. vs. American Can Co., 72 N. J. Eq. 387.. 27
Wade vs. Blieden, 86 F. (2d) 75, (C. C. A. 8)..... 18
Ward and Rand vs. Boston Coffee Co., 41 F. (2d) 625, (C. C. A. 8)..... 18
Webb et al., vs. John Hancock Mutual Life Ins. Co., et al., 69 N. E. 1006 (Ind. Sup.)..... 30
Winslow vs. Staab, 242 F. 426, 431 (C. C. A. 2)..... 25 (2)

STATUTES.

Rule 8, Federal Rules of Civil Procedure, Title 28, U. S. C. A. foll. Section 723 c..... 12, 22

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OPPOSING BRIEF OF RESPONDENT EDWARD L. SCHEUFLER (SUCCESSOR) SUPERINTENDENT OF THE INSURANCE DEPARTMENT OF THE STATE OF MISSOURI.

To the Honorable the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

INTRODUCTION.

The respondent, Edward L. Scheufler, Superintendent of the Insurance Department of the State of Missouri, opposes the grant of the writ of certiorari and respectfully urges the Court to deny the petition therefor.

The three-Judge District Court on August 14, 1940, rendered the decrees involved. These petitioners appealed to both this Court and to the Circuit Court of Appeals for the Eighth Circuit.

This Court held that a direct appeal would not lie to this Court. *American Insurance Co. vs. Lucas 314* U. S. *575, 62* Sup. Ct. *107*; 86 Law Ed. 55, Justices Murphy and Jackson not participating.

The Eighth Circuit Court of Appeals on July 25, 1942, affirmed the decrees of three-Judge District Court (*American Insurance Co. vs. Scheufler* 129 Fed. (2) 143, Rec. V, p. 16) and the petitioners are seeking a writ of certiorari to review that decision.

After the appeals had been taken Hon. Edward L. Scheufler succeeded Hon. Ray B. Lucas as Superintendent of the Insurance Department of Missouri and was duly substituted in these cases for Lucas by the Court of Appeals. (V pp. 7 and 8). Ray B. Lucas in January 1939 became Superintendent succeeding the late Geo. A. S. Robertson who in October 1937 had been appointed to said office as successor of R. Emmet O'Malley therein, who was successor of Joseph B. Thompson, successor of Ben C. Hyde.

Deeming the petitioners' statement to be inaccurate and not to be complete enough to cover even the meager facts set forth in the opinion sought to be reviewed or sufficient to give the court all the facts necessary to a decision upon this petition, we next submit our statement.

STATEMENT.

(1) The "prior rates" known as the "Hyde rates" mentioned in the third paragraph, page 3, of this petition, and claimed to have been *confiscatory*, came about by a rate *reduction* order made by Insurance Superintendent Hyde, on October 9, 1922. This reduction order was sustained in the Missouri Supreme Court in 1926 (*Aetna vs. Hyde*, 315 Mo. 113, 285 S. W. 65). After grant of certiorari this Court, on January 3, 1928, affirmed the decision of the Missouri Supreme Court (*Aetna vs. Hyde*, 275 U. S. 440) (Rec. Vol. A-8). Later attacks of the companies in the national courts on this 10% reduction ended adversely. *Aetna vs. Hyde*, 34 Fed. (2d) 185 rendered April 13, 1929; which was affirmed in *National Fire Insurance Company vs. Thompson*, 281 U. S. 331, on April 14, 1930. (Rec. Vol. A, 9-10).

(2) Thereupon the petitioners herein and other stock fire insurance companies then undertook to more than neutralize the above reduction, and to that end, on December 30, 1929, filed rating schedules to produce an increase of 16-2/3% in fire and windstorm rates over the Hyde rates, or 105% over the rates prior to the Hyde 10% reduction. As a result, in May 1930 these suits resulted: (a) 139 companies (the petitioners herein) brought in the United States District Court, the 137 suits mentioned in par. 3, p. 3 of the petition herein, out of which there arose the impounded funds herein involved and (b) about 60 companies joined in a single companion suit in the State Court to review the Superintendent's refusal to approve the proposed rate increase and out of which an impounded fund therein arose. All these suits were to enjoin the Superintendent of Insurance and the Attorney General from interfering with their purpose to collect this 16-2/3% increase. The companies lost this companion suit in the State Court, the O'Malley settlement hereinafter mentioned was rejected by the Missouri Supreme Court and the State Court impoundment of this 16-2/3% rate increase was ordered to be returned to policyholders. *American Constitution Fire Assur. Co. v. O'Malley*, 342 Mo. 138; 113 S. W. (2d) 795.

(3) Respecting the 137 suits brought in the U. S. District Court, we adopt and quote from par. 3, p. 3 the Petitioners' statement: "In May, 1930, the petitioners filed separate suits to enjoin the Superintendent of Insurance and Attorney General of Missouri from interfering with the petitioners' collection of a 16-2/3% increase in rates, on the ground that the prior rates were confiscatory; that the 16-2/3% increase was reasonable; and that the threatened acts of the Superintendent of Insurance and Attorney General, and the Missouri Statutes under which they claimed to act, were confiscatory, and unconstitutional under the 14th Amendment.

"On July 2, 1940, the 3-Judge Court enjoined any interference with the collection of the 16-2/3% increase, but upon condition that the 16-2/3% increased rates, when collected, should be impounded and paid to the Court's Custodian (R. 19-25, Vol. A); and about $10,000,000 was so 'impounded' in the Court's custody."

(4) On May 18, 1935, R. Emmet O'Malley, Superintendent of Insurance, and Charles R. Street, as agent of the insurance companies, entered into a contract of settlement of all the cases. (Copy: Rec. I, 27-31, summarized in Rec. IV, 66-67).

In this settlement agreement Superintendent O'Malley agreed to set aside his predecessor Thompson's order of May 28, 1930, expressly disapproving the 16-2/3% increase, and make a new order retrospective to June 1, 1930, approving four-fifths of the increase of fire and windstorm rates and disapproving to the extent of one-fifth of the rates proposed in those classes. (The power to make such a retroactive rate order was expressly denied by the Missouri Supreme Court in the *American Constitution* case, supra, Feb. 28, 1938, in the Companion State Court 16-2/3% case). The contract further agreed that the court may order that a return of 20% of the impounded funds should be returned to the policyholders, fifty per cent thereof to the insurance companies (these petitioners) and thirty per cent to "R. J. Folonie, counsel for plaintiff in said suits and Charles R. Street, Chairman of the Committee of the companies supervising such matters on behalf of the companies", as trustees to take care of certain expenses of the litigation, including $500,000.00 as fees and expenses of the attorneys for Superintendent O'Malley. (See Contract Vol. I, l. c. 29).

(5) Following this (June 19, 1935) a stipulation relating to settlement was filed (A 175-8) in the U. S. District Court, which among other things provided for said distribution and the termination of the suits (A l. c. 177).

At various times after the execution of the contract and of the filing of the motion for stipulation, the matters were presented to the three-Judge district court by counsel. On one occasion, October 26, 1935 (Rec. Vol. A, pp. 178-208) there appears the addresses to the court by attorneys on both sides urging the court to make the requested order to complete the settlement. These abound in assurances of its fairness and good faith.

(6) On February 1, 1936, the decrees of the three-Judge Court resulted in the order of a distribution of the impounded funds as had so been agreed upon. (Record Vol. I, 32-40),

summarized in Record Vol. IV, 67-74). The thirty per cent of said impounded fund was received by Charles R. Street and Robert J. Folonie as trustees, and they executed a declaration of trust, copies in Volume I, 40-44, and summarized in Volume IV, 75-88.

It will be observed that paragraph *No. 1* of the decree of February 1, 1936, (Rec. Vol. I, 33 and Vol. IV, 67) recited that the controversy having been settled and disposed of, the cause is dismissed, and in paragraph *No. 7* (Rec. I, l. c. 39 and Rec. IV, l. c. 73) jurisdiction was retained to make orders respecting the obligation of the parties or the fund, etc., and in paragraph *No. 8* the plaintiff and its sureties were by the Court discharged from liability upon the injunction bonds heretofore executed by the Court and entered into by the plaintiff and its sureties. (Rec. Vol. I, 39 and Vol. IV, 74).

(7) About April or May, 1939, it was learned that the settlement and decree had been brought about by the payment of large sums of money to T. J. Pendergast, a political boss in Missouri, and the bribery of O'Malley, the then Superintendent of Insurance of Missouri. Hon. Ray B. Lucas, then Insurance Superintendent of Missouri, filed his motion for citation on May 29, 1939 (Rec. Vol. A, 220-25) in each of the 137 cases and against each and all the companies (Rec. Vol. A, 230) who are petitioners herein. The companies then, were represented by the counsel who now appear for them herein. (Rec. Vol. A 229).

THUS, ON MAY 29, 1939, THERE WAS INSTITUTED THE PROCEEDINGS OUT OF WHICH THE DECREES OF AUGUST 14, 1940 (A 412) RESULTED, AND WHICH WERE THE SUBJECT OF THE DECISION ON APPEAL TO THE EIGHTH CIRCUIT COURT OF APPEALS NOW SOUGHT TO BE REVIEWED.

(8) Such *motions* for citation, among other things, alleged that while the rate cases were pending, at issue and undetermined in said Court, and involving the right of the complainant companies to a proposed 16-2/3% premium

rate *increase* for fire and windstorm insurance, (which the Superintendent (Thompson) had refused to approve), that Charles R. Street as agent for all the insurance companies, complainants (or plaintiffs) by means of the bribery of O'Malley (then Superintendent), and the corruption of T. J. Pendergast, had induced the said O'Malley to enter into a written contract with him, dated May 18, 1935, to settle all said 137 cases pending in said court and a companion state court case and to distribute the impoundings therein; that as a direct result of said agreement and of the motions and stipulations presented to the court, which had no knowledge of such bribery, a fraud "especially respecting the distribution of the fund" was practiced and perpetrated upon the district court which caused its decrees of February 1, 1936 (A 212-20) in all of said 137 cases to be made upon the basis and terms of said agreement; that said last mentioned decrees, following the terms of said agreement, had ordered that distribution of the impounded funds, which, from time to time since July 1, 1930, had been impounded with the court's custodian during the pendency of the litigation, (and to abide the events thereof), be made in the ratios of 20% to policyholders and 80% to the plaintiff companies in the litigation.

(9) Said Motions also alleged, among other things, that said decrees of February 1, 1936, dismissed the suits, released all complainants and their sureties from all liabilities on all the injunction bonds and retained jurisdiction over all persons or parties affected by the decrees (A 228).

The prayers of said Motions were for citations:

1. "That citation be issued and served upon the plaintiff and the plaintiffs in the said related cases ordering and directing them to show cause, if any they have, why said decrees of this Court made February 1, 1936, should not be set aside to the extent of the distribution thereof and that such decrees be so modified as to assure an ultimate distribution to policyholders of the entire fund unlawfully collected from them, giving credit for the sums paid them, and that they and each of them may be ordered and adjudged to pay to the custodian of this

Court the full 80 per cent of all the said impounded fund, together with interest of at least 6 per cent per annum since the funds were taken from such policyholders."

2. "For such other and further relief as may seem meet."

RESTORATION AND SHOW CAUSE ORDERS ISSUED.

(10) The District Court, at the hearing (A 229-249) on May 29, 1939, made two orders: (1) for restoration to the custodian on or before July 1, 1939, of all of said 80% which had been withdrawn (A 249-50) and (2) a Show Cause Order (A 251) requiring the companies, on or before June 15, 1939, to show cause, if any,

> "Why all the funds which have been ordered to be returned by it to the Custodian, Wm. T. Kemper, Jr., heretofore appointed in this cause under order of this Court on this date, as well as all other sums of money in the hands of said Custodian, should not be distributed to the proper policyholders and this cause dismissed at the cost of the plaintiff, including the cost of such distribution to such policyholders." (A 251).

Entire satisfaction was there expressed by counsel for the companies (A 245) as well as repeated assent to restoration of the funds earlier in such hearing (A 239), and especially when the court questioned counsel particularly on the procedure (A 240-44) and no objections were made and no exceptions were taken to either order (A 244-5). The companies fully restored the funds to the custodian as required by said order, without objection, challenge or any form of resistance through court actions or otherwise, amounting to $7,190,982.99. (Rec. IV, p. 120). In addition thereto the custodian had at that time $613,918.21 which had not been distributed to the companies (Rec. IV, p. 120) and also $327,322.31 accrued from interest and accretions, which had been withheld chiefly to carry the cost of distribution to policyholders. Therefore $8,132,223.51 is now involved, which does not include any part of the 20% set apart for policyholders.

ANSWERS TO SHOW CAUSE ORDER.

(11) We have so strenuously insisted that the companies' answers made no claim to this fund and did not ask a reinstatement of the rate cases, including injunctions, that we will quote from petitioners' petition (Last half p. 6) to support our view, to-wit:

"Each of the petitioners filed its return to this show cause order on June 15, 1939. In these returns, after denying that C. R. Street, or any other person, was authorized to commit bribery or to pay any moneys to induce official action, or to consent to so doing, and after denying knowledge of or participation in any supposed bribery, or payment of moneys to induce official action, and after a disaffirmance of any advantage in any wise arising from the decree of February 1, 1936, either upon the settlement or rate order forming the basis thereof, they alleged that the Court could 'make distribution of the sums in its possession only according to law to the lawful owners of said monies as may be determined upon an appropriate hearing and determination of the merits of the controversy as set forth in the pleadings of the respective parties and pursuant to the evidence and Master's Report and exceptions thereto'; and *prayed* that the Superintendent show cause 'why the Court should not proceed with the determination of the merits of the controversy between plaintiffs and defendant as in their pleadings set forth' (R. Vol. A, pp. 257, 258)."

MOTION TO STRIKE.

(12) On June 19, 1939, Superintendent Lucas filed his motion to strike out all of said answers (Rec. A, 263-70) which motion might well have been sustained for the reason that the facts alleged therein stated no lawful answer to the show cause order or any defense thereto nor any reason why the show cause order should not be made absolute and made no claim to the fund apart from a suggested retrial of their abandoned rate cases and a request for citation against the Superintendent which was purely a procedural contention.

But, instead, the Court appointed a special master to take the testimony as to the conduct of the parties in these

cases and as to any connection therewith of any agent of the companies authorized to act in connection with this litigation and as to the knowledge of any authoritative officer or officers of the companies as to the acts of any such agent. (A 270). The master took the testimony (Rec. Vols. I, II and III) wherein the companies by their aforesaid attorneys appeared at each hearing and without objection of any kind participated and cross-examined adverse witnesses as well as producing (III, pp. 437 to 534) their own testimony, which showed no right or claim to the fund. The Master's report Vol. IV was filed with said Vols. I, II and III on January 25, 1940.

(13) Thereupon the cases were briefed, and on May 20, 1940, argued before the three-Judge District Court, (A 273-349), by the same counsel for the companies and the Superintendent as appeared when the orders of restitution and to show cause were entered. No formal pleading or motion was filed claiming the fund. After a full consideration of the case the Court entered its findings of fact (A 407-10), its conclusion of law (A 410-11) and its decree appealed from. (A 412-13). The opinion of the three-Judge District Court on the merits will be found *American Insurance Company vs. Lucas*, 38 F. Supp. 896, and on the motion for new trial, same case, 38 F. Supp. 926. Both opinions were by Judge Kimbrough Stone, Circuit Judge. Reeves and Otis, District Judges, concurred in both.

(14) Charles R. Street was the agent of all the companies involved (Finding of Facts VIII, Rec. A, p. 409), the petitioners herein. He paid T. J. Pendergast $50,000.00 and agreed to pay $750,000.00 to procure the settlement (Finding of Facts I, Rec. A, 407). O'Malley entered into the agreement of settlement to dispose of the impounded fund with full knowledge of said payment (Finding II A, l. c. 407). Street made further payments to Pendergast from which he paid O'Malley $62,500.00, $22,500.00 of which was before the motion and stipulation for settlement were filed in the District Court upon whch the decree of dismissal and distribution of the impounded funds were based (Finding No. III, Rec. A, l. c. 408) to effectuate the distribution of the funds (20% to the policyholders and 80% to the companies

that is 50% direct and 30% to trustees for expenses with remaining balance to the companies, (Finding IV, Rec. A, l. c. 408) action by the court was necessary and upon representations (also the motions and stipulation for settlement) that it was an honest good faith settlement by antagonistic litigants the decree of February 1, 1936 was entered (Finding V, Rec. A, pp. l. c. 408). A total of $440,000.00 of companies' moneys were paid by Street to Pendergast.

(15) When the appeals were taken from the District Court to the Eighth Circuit Court of Appeals, the petitioners filed their points to be relied upon, fifteen in number, none of which complained of the findings of fact or conclusions of law, either generally or specifically, and which will be found A 490-494. It will be observed that all except points 14 and 15 charged that "The Court erred in *holding*" (Italics ours), which refers only to the *ruling* of the Court on the law, or if it means the Court's fact findings, it means only the facts which the Court mentioned and found in its opinions.

(16) In carrying the appeal to the Eighth Circuit Court of Appeals, the appellants stated in their *Brief* their points to be relied upon for reversal (Rec. V, pp. 8-11), being eleven in number, none of which challenge or complain of the findings of fact or conclusions of law. In the first ten of the points set out the petitioners again allege only error of the Court in *holding*. (See Rec. Vol. V, 11).

The 11th point alleges error in refusing to grant each of the companies the right to a decision on the merits and in denying interlocutory injunctions and permanent injunctions as prayed in the original and Amended Bills of Complaint.

There was no citation in that connection of any place in the record where the right to a decision on the merits was asked unless it be in the Answer to the show cause order and no citation of any place in the record (for there was none) where injunctions were asked or denied. In the petition filed herein for writ of certiorari it is not even asserted that injunctions were asked or denied.

(17) The unanimous opinion in the Eighth Circuit Court affirmed the judgment of the three-Judge District Court. *American Insurance Company vs. Scheufler* et al., 129 F. (2d) 143 (V. 16-25). The Court of Appeals, in its said opinion, stated the fact to be (and it is true) that points 9, 10, and 11, relied upon for reversal, were not briefed, and, therefore, were *abandoned* (Opinion V 19). If the petitioners are now asking for a writ of certiorari upon any of these abandoned assignments, (Nos. 9, 10, and 11, set out in their brief) we submit that the petition should be denied, as it should also be denied on other grounds.

SUMMARY OF THE ARGUMENT.

I.

Petitioners' points relied upon for reversal in the C. C. A. were so insufficient and defective that they presented nothing for review in that Court. Therefore, they are in no position to urge any reasons in this Court as grounds for allowance of the writs of certiorari.

(1) Petitioners are in no position to urge consideration of any of "Questions Presented" (R. Vol. V, pp. 8-9) or of any of their "Reasons relied upon for the allowance of the writ" (R. Vol. IV, pp. 10-25) in their petition, for the reason that in order for same to be considered in this Court, such questions or reasons must have been properly assigned and presented as errors in the C. C. A. That is, they must be based upon errors properly assigned and presented in the C. C. A., which has not been done herein. Petitioners in their brief relied upon eleven points for reversal in the C. C. A. The first ten of said points merely charged that the District Court erred in holding, etc. Point eleven was nothing more than an assignment that the decree was for the wrong party. None of these points directly attacked the findings of fact of the District Court and they did not make any specific reference to the District Court's conclusion of law. Neither did they give any reference to the page of the record where any finding of fact, conclusion of law, or other ruling or action of the District Court complained of was to be found. The first ten points

in merely charging that the Court erred in holding, etc., were directed to the holding of the District Court, as reflected in its opinions on the merits and in denying the motions for new trials. Point eleven was insufficient because it did not particularize any error. Points charging error must be so definite that the Court will understand from them what errors are before the Court for review.

(2) Petitioners are in no position herein to urge Question I of the "Questions Presented" page 8 of their petition, and Reason I of "Reasons relied upon for the allowance of the writ," page 10 of their petition, as ground for granting certiorari. Such question and reason are based upon points 10 and 11 of the "Points relied upon for reversal" by petitioners in the C. C. A. and these points were abandoned in the C. C. A. because petitioners neither briefed nor argued said points in the C. C. A. Having abandoned said points 10 and 11 in the C. C. A., petitioners may not urge any reason or ground herein for allowance of the writ based on said points 10 and 11.

(3) Question II of the "Questions Presented" on page 10 of the petition for certiorari may not be urged herein as ground for certiorari for the reasons (1) This question is neither briefed nor argued herein and is, therefore, abandoned, and (2) Said question was not assigned as error in the C. C. A., and was not raised by the pleadings or otherwise in the Courts below. Such question being raised for the first time in this Court will not be considered.

II.

Petitioners' contentions in their reason I of their "Reasons for allowance of the writ," page 10 of their petition, that the C. C. A. held the $8,000,000.00 should be paid to the policyholders without any decision (1) as to who owned the funds, or (2) whether or not the prior rates were confiscatory, and the increased rates lawful, and that the holding of the Court is in conflict with United States vs. Morgan, 307 U. S. 183, are without merit because:

(1) They did not ask or demand such relief including injunction in their pleadings as required by Rule 8, Federal Rules of Civil Procedure, Title 28, U. S. C. A. foll., Section 723c. Not having asked or demanded this relief by their

pleadings, they cannot now complain. The case was fairly tried on the issues as framed by the pleadings.

(2) The Court was without power in the show cause proceeding to determine whether or not the prior rates were confiscatory and the increased rates lawful. That could only be done in the original statutory injunction proceeding, which had been voluntarily dismissed by petitioners, and was not asked to be reinstated including injunction in the show cause proceeding.

(3) The prior rates were sustained by the Missouri Supreme Court, *Aetna vs. Hyde*, 315 Mo. 113, 285 S. W. 65, which decision was affirmed by this Court, *Aetna vs. Hyde*, 275 U. S. 440; subsequent attacks on the prior rates failed in the Eighth Circuit, *Aetna vs. Hyde*, 34 F. (2d) 185, affirmed by this Court, *National Fire Insurance Company vs. Thompson*, 281 U. S. 331. In a companion State Court case, where the increase was impounded as was done herein, the Missouri Supreme Court held that the impounded funds belonged to the policyholders, *American Constitution Fire Assurance Company vs. O'Malley*, 342 Mo. 139, 113 S. W. (2d) 795.

(4) The petitioners, by their bribery of the Superintendent and their fraud upon the Court, forfeited their right to have the original injunction suits reinstated. The issues, as framed by the pleadings, were found against petitioners by both the District Court and the C. C. A. upon abundant evidence.

(5) The case at bar being a proceeding in equity, the Court, by the motion to show cause, was called upon to act upon its earlier action in the original matter in equity. In such situations the name and form of the action is immaterial, provided it affords adequate opportunity for interested parties to support and contest the relief sought. This opportunity includes the necessary elements as due process, such as sufficient notice, production of evidence and proper hearing in other respects. Where these essentials have been preserved, procedure by motion has been approved. These were all afforded petitioners herein.

(6) When the fraud was called to the attention of the Court, it was then the duty of the Court to do all within its

power to prevent the wrongdoers from enjoying any advantage of their own wrong.

(7) It was only necessary in the show cause proceeding, it being in equity, upon discovery of the fraud, to operate upon the wrongdoers benefiting by the fraudulent decree and need not disturb the original decree or judgment.

(8) There is no conflict between the holding in this case and United States vs. Morgan, 307 U. S. 183. The Morgan case was a *pending controversy*. There had been no voluntary dismissal of the cause upon agreement of adverse parties at a previous term, as in this case. There was no bribery of one of the adverse litigants and no fraud imposed on the Court as in this case.

III.

There is no conflict between the holding of the C. C. A. in this case and the decisions of other Circuit Courts of Appeal. In all the cases cited by petitioners from other Circuits which they claim to be in conflict with the holding of the C. C. A. in this case, only mere salesmen and underlings were the agents involved. They did not represent the corporations in the sense that their acts were the corporations' acts. They were not such agents as their knowledge was the knowledge of the corporation. In this case Street was an authorized unrestricted agent for all the companies. He was authorized to so act by the managing officers of the companies involved. It was the managing officers of the petitioners who had knowledge of Street's conduct and who authorized all money to be paid to Street under the very unusual and suspicious circumstances as found by the District Court. These were officers whose knowledge was the knowledge of the corporation.

IV.

The managing officers of petitioners had knowledge of facts which should have put them on inquiry. The knowledge of these officers was the knowledge of the corporations. The means of knowledge were at hand for them to have obtained full knowledge of the fraud, if they desired

to inquire. They are chargeable with all the facts which a proper inquiry would have disclosed. It follows that the companies were also chargeable with such knowledge.

V.

The bribery of the Superintendent and the fraud imposed upon the Court by petitioners in the original rate suits were accomplished while these suits were pending and at issue. The wrong-doing directly related to the matter in controversy and affected petitioners' equity therein. They may not now have this same controversy in which they imposed the fraud upon the Court, reinstated and tried, and a request therefor (which they did not ask below) is not ground for granting certiorari herein. They are precluded from doing so by the unclean hands maxim, which requires that a litigant keep his hands clean throughout the litigation.

ARGUMENT.

I.

PETITIONERS' POINTS "RELIED UPON FOR REVERSAL IN THE C. C. A. PRESENTED NOTHING FOR REVIEW IN THAT COURT. THEREFORE, THEY MAY NOT URGE ANY REASONS HEREIN AS GROUNDS FOR CERTIORARI.

(1) Petitioners are in no position to urge consideration of any of "questions presented" (R. Vol. V, pp. 8-9) or of any of their "reasons relied upon for the allowance of the writ" (R. Vol. IV, pp. 10-25) in their petition, for the reason that in order for same to be considered in this Court, such questions or reasons must have been properly assigned and presented as errors in the C. C. A. That is, they must be based upon errors properly assigned and presented in the C. C. A., which has not been done herein. All of the points relied upon for reversal in the C. C. A. did not directly attack the findings of fact of the District Court and they did not make any specific

reference to the District Court's conclusions of law. Neither did they give any reference to the page of the record where any finding of fact, conclusion of law, or other ruling or action of the District Court complained of was to be found. Rule 14, Sec. 2, Fourth Par., Eighth Circuit.

Petitioners in their brief relied upon eleven points for reversal in the C. C. A. The first ten of these points charged that the "Court erred in holding". (See points relied upon for reversal in C. C. A., R. Vol. V, pp. 8-11). These ten points were directed to the holding of the District Court as reflected in its opinions on the merits and in denying the motions for new trial. The findings of the Court were not directly challenged by the first ten points, and therefore presented nothing for review before the C. C. A. as held by the C. C. A. (See Opinion C. C. A., Vol. V, pp. 19-23).

Jones vs. Futrall, 75 F. (2d) 418 (C. C. A. 8);
E. R. Squibb & Sons vs. Mallinckrodt Chemical Works, 69 F. (2d) 685; certiorari denied, 295 U. S. 759, and certification of rule question to this Court in same case, 293 U. S. 190, quoted from in Point I-(2) supra, of this argument.

Ford Motor Company vs. Brady, 73 F. (2d) 248 (C. C. A. 8);
United States vs. Porter Fuel Co., 247 F. 769, 770, (C. C. A. 8);
Stone vs. United States, 164 U. S. 380, 383;
United States vs. Shoshone Tribe of Indians, 304 U. S. 111, 115;
M. E. Blatt Co. vs. United States, 305 U. S. 267, 277.

In Jones vs. Futrall, supra, the Court said: (l. c. 419)

"The other specifications, with the exception of the last specification, challenge 'holdings' of the Court. These obviously refer to the reasons which are given in the opinions for the conclusion reached.

In the case of E. R. Squibb and Sons. vs. Mallinckrodt Chemical Works (C. C. A. 8) 69 F. (2d) 685, 686,

this Court said, with reference to such assignments: 'Obviously, each of these assignments is an attack upon a rule of law claimed to have been stated in the opinion. It is a long established doctrine in this Court that error cannot be based upon the opinion of the Trial Court (citing cases).' "

The Court then quoted from United States vs. Porter Fuel Co., supra: (l. c. 420)

" 'The opinion of the Court was not the subject of exception or assignment of error. The reasons given in the opinion for the judgment of the Court might be wrong, and still its judgment right. It is what the Court did, and not what it said, which is subject to exception and review.' "

Of like effect:

Ford Motor Company vs. Brady, supra.

See also holding of this Court on certification of question to this Court by C. C. A. 8 as to whether that Court could affirm judgment where assignment of errors were so defective as to present nothing for review in the case of E. R. Squibb and Sons vs. Mallinckrodt Chemical Works, supra, 293 U. S. 190, discussed and quoted from under point I-(2) of this argument.

The holding of the Eighth Circuit Court of Appeals on this question is in line and conformity with the holding of this Court.

In *Stone vs. United States*, supra, this Court said: (l. c. 383)

"We are not at liberty to refer to the opinion for the purpose of eking out, controlling or modifying the scope of the findings."

Of like import are:

United States vs. Shoshone Tribe of Indians, 304 U. S. 111, 115;
M. E. Blatt Co. vs. United States, 305 U. S. 267, 277.

There can be no ground in this Court for the urging of any reason for allowance of the writ arising out of Point 11 of the points relied upon for reversal in the C. C. A. for the reasons (1) Point 11 was abandoned in the C. C. A. and no reason based thereon can be urged here for allowance of the writ. (See authorities under point I-(2) of this argument.) (2) Point 11 of the points relied upon for reversal was nothing more than an assignment that the decrees were for the wrong parties, which is not sufficient to require a review for the reason it does not particularize any error.

Sea Board Air Line Ry. vs, Watson, 287 U. S. 86;
Wade vs. Blieden, 86 F. (2d) 75, (C. C. A. 8).

Points charging error must be so definite that the Court will understand from them what errors are before the Court for review. Resort cannot be had to the brief of a party to enlarge them or make them more particular.

Currin vs. Nourse, 74 F. (2d) 273, (C. C. A. 8);
American Surety Co. vs. Fisher Warehouse Co., 88 F. (2d) 536, (C. C. A. 8).

Where no claim is made in points to be relied upon that the testimony is insufficient to support the decree, it is unnecessary for the Court to discuss whether it is sufficient or not. The C. C. A. and this Court are not Courts of original research.

King vs. Worthington, 104 U. S. 44;
Ward and Rand vs. Boston Coffee Company, 41 F. (2d) 625, (C. C. A. 8).

It seems clear that all of the eleven points relied upon for reversal by petitioners in the C. C. A. were so defective and insufficient that they presented nothing to that Court for review, and as that Court held, the failure of petitioners in that Court in that respect was sufficient ground for affirmance of the judgment. In the C. C. A. none of said points challenged the findings of the District Court. They made no specific reference to any conclusions of law of the District Court and they did not give any reference to the

page of the record where any finding of fact, conclusion of law, or other ruling or action of the District Court complained of could be found. Therefore, all points relied upon for reversal in the C. C. A. were so defective as to present nothing for review by that Court, and no questions or reasons can be urged here for allowance of the writ based upon the said points purporting to assign error in the C. C. A.

(2) Petitioners are in no position to urge this Court to pass upon Question "I" of "Questions Presented", page 8 of their petition, and Reason "I" of "Reasons relied upon for the allowance of the writ," page 10 of their petition, as grounds for granting certiorari. This is so because the reason set forth in Reason "I" for the allowance of the writ was incorporated in and based upon Points 10 and 11 of the Points relied upon for reversal in the C. C. A. (Rec. V, p. 10). The petitioners did not brief or argue Points 10 and 11 of their points relied upon for reversal in the C. C. A. The C. C. A. held that by that failure petitioners had abandoned said points. (Rec. Vol. V, p. 19). The holding of the C. C. A. is in accord with the holding of this Court and the overwhelming weight of authority.

E. R. Squibbs & Sons vs. Mallinckrodt Chemical Works, 293 U. S. 190;

E. R. Squibb & Sons vs. Mallinckrodt Chemical Works, 69 F. (2d) 685 (C. C. A. 8), certiorari denied, 295 U. S. 759;

Eastman Kodak Company of New York vs. Southern Photo Materials Company, 273 U. S. 359;

I. T. S. Rubber Co. vs. Essex Rubber Co., 272 U. S. 429.

In the Squibb case, 69 F. (2d) 685, the Circuit Court of Appeals, Eighth Circuit, held, l. c. 687, that an assignment of error was abandoned where question presented thereby was not argued in appellant's brief. This Court answered in the affirmative the following question certified to it by the C. C. A. in that case, 293 U. S. 190:

> "Where, on an appeal properly in this court, the appellee contends that one of the assignments of error has been abandoned and all others are not presentable

because defective either as assignments of errors or as specifications of errors and urges affirmance of the decree appealed from and this Court determines that such contention is well founded in all respects and that no issue on the merits is, for such reasons, presentable to it, is it proper to affirm the decree appealed from,"

. . . . . .

This Court subsequently denied certiorari on the C. C. A. decision, 69 Fed. (2) 685, in this same case, 295 U. S. 759.

Eastman Kodak Company of New York vs. Southern Photo Materials Company, 273 U. S. 359. This Court said: (l. c. 369)

"While many errors were assigned, some of which were also specified, in general terms, in the defendant's brief in this Court, we confine our consideration of the case in this opinion to the controlling questions which are stated in that brief to present the chief issues here in controversy, *and to which alone the argument in the brief is directed.*" (Italics ours.)

I. T. S. Rubber Company vs. Essex Rubber Company, 272 U. S. 429, this Court said: (l. c. 431-32)

"In the brief for the I. T. S. Company in this Court it is asserted, in general terms, that the action of the Essex Company 'in suits brought against its jobbers in the Sixth Circuit estop it from denying infringement here', and that the Circuit Court of Appeals erred in holding that it was not estopped by the decrees in such suits. *The argument in the brief, however, specifies and deals with only one of such prior suits; and there being as to the others no semblance of compliance with the requirements of Rule 25 of this Court, we need consider only the suit specifically relied on.*" (Italics ours.)

The petitioners having abandoned Points 10 and 11 of their points relied upon for reversal in the C. C. A. cannot now raise the same ground or reason here by Reason "I"

of their Reasons for allowance of the writ as ground for granting of the writ.

(3) Question II of the questions presented on page 10 of petitioners' petition for certiorari affords no basis for granting certiorari for the reasons (1) This question is neither briefed nor argued herein and under the holdings of this Court is abandoned, (See authorities under point I-(2), of this argument) and (2) The question as to whether the show cause orders (entered in each petitioner's case) automotically set aside the decrees of February 1, 1936, dismissing the cause, and thereby left the three-Judge Court absolutely free to determine the merits of the petitioners' original suits, to-wit, whether the impounded funds should be paid to policyholders or should be paid to petitioners, was not assigned or specified as error in the C. C. A. and was not raised by the pleadings or otherwise in either of the Courts below, and such question presented for the first time in this Court in support of a petition for certiorari will not be considered. (See points relied on for reversal in C. C. A.) (V 5, pp. 8-11).

Sonzinsky vs. United States, 300 U. S. 506, l. c. 514;
Burnett vs. Commonwealth Improvement Company, 287 U. S. 415, l. c. 418;
Edward Hines Yellow Pine Trustees vs. Martin, 268 U. S. 458, l. c. 465, and cases cited.

Furthermore, petitioners may not prevail in this Court upon a theory different from theory relied on in lower Court.

Delaware, Lackawana and Western Railroad Company vs. Koske, 279 U. S. 7, l. c. 10.

II.

PETITIONERS NOT ENTITLED TO RELIEF WHICH THEY DID NOT ASK IN LOWER COURT. THE FAIRNESS OF THE RATES COULD NOT BE LITIGATED IN THIS PROCEEDING, BUT THE PRIOR RATES HAVE BEEN SUSTAINED IN BOTH

FEDERAL AND STATE COURTS. COURT COULD ONLY DETERMINE ISSUES AS FRAMED BY PLEADINGS IN SHOW CAUSE PROCEEDING UPON WHICH PETITIONERS HAD FAIR TRIALS. SHOW CAUSE PROCEEDING WAS PROPER AND AFFORDED PETITIONERS DUE PROCESS. THERE IS NO CONFLICT BETWEEN THIS CASE AND UNITED STATES VS. MORGAN, 307, U. S. 183.

Petitioners attack in their Reason I for the allowance of the writ, at page 10 of the petition, what they claim to be the holding of the Court that the $8,000,000.00 should be paid to the policyholders, without any decision, (1) as to who owned the funds, or (2) whether or not the prior rates were confiscatory, and the increased rates lawful. They state several reasons why certiorari should be granted because of this claimed holding of the Court and that the Court's holding is in conflict with United States vs. Morgan, 307 U. S. 183. There is no merit in petitioners' contentions.

(1) Petitioners in their answers (last half page 6 petition) to the show cause order make no demand for the relief for which they now contend, as required by Rule 8, Federal Rules of Civil Procedure, Title 28, U. S. C. A. foll., Section 723c. That is, they did not in their answer demand (1) That the rate suits be reinstated and to include injunction, (2) The ownership of the funds be adjudged and decreed, and (3) That the Court adjudge and decree whether or not the prior rates were confiscatory, and the increased rates lawful. Not having demanded this relief by their pleadings, they cannot now complain. The issues as framed by the pleadings were tried on the merits thereof and the Court found against petitioners upon abundant evidence. Petitioners are having their day in Court in accordance with law and substantial justice.

(2) The Court in the show cause proceeding was without power to decide whether or not the prior rates were confiscatory. Such adjudication could only be made in the original statutory injunction proceeding, which was dismissed by the consent decree of February 1, 1936 and had not been reinstated. This Court inferentially held that

on the direct appeal of this case to this Court American Insurance Company vs. Lucas, not yet officially reported, 86 L. E. 55, 62 S. Ct. 107, wherein it was held that the decrees herein, "were not decrees granting or denying an injunction." Therefore direct appeals to this Court do not lie."

(3) The prior rates or the Hyde rates were sustained by the Missouri Supreme Court June 23, 1926. *Aetna vs. Hyde*, 315 Mo. 113, 285 S. W. 65, and this Court affirmed the decision of the Missouri Supreme Court, *Aetna vs. Hyde*, 275 U. S. 440, (Rec. Vol. A 8). Thereafter, the efforts to attack the Hyde rates or prior rates ended in an adverse decision to the insurance companies in the Eighth Circuit on April 13, 1939 (*Aetna vs. Hyde*, 34 Fed. (2d) 185) which was affirmed by this Court in National Fire Insurance Company vs. Thompson on April 14, 1940, 281 U. S. 331 (Rec. Vol. A, 9-10). A number of insurance companies brought a companion action in the State Courts to review the action of the Superintendent in disapproving the increase in rates. The increase was ordered collected and impounded by the lower State Court, as was done herein. On appeal to the Missouri Supreme Court, in this companion State Court rate suit, *American Constitution Fire Assurance Company vs. O'Malley*, 342 Mo. 139, 113 S. W. (2d) 795, that Court held, among other things, that the impounded funds as represented by the increased rates, belonged to the policyholders, because Superintendent O'Malley had no authority of law to approve a rate increase to operate retroactively, as was provided in the settlement agreement of May 18, 1935, which included these 137 suits as well as the companion state court suit. Such settlement agreement was the basis for the decrees of February 1, 1936 in these 137 cases in the District Court.

(4) The petitioners forfeited their right to have the original injunction proceedings reinstated (which they did not ask) by their bribery of the Superintendent of Insurance, and their fraud upon the Court in obtaining the decrees of February 1, 1936. They, by their bribery of the Superintendent of Insurance, and the fraud upon the Court, settled and disposed of the then pending rate controversy.

Their bribery and fraud related to the very matter in controversy and which controversy they are now seeking by their petition for certiorari herein to reinstate. These matters were issues and questions raised by the pleadings in the show cause proceedings and these issues and questions were found against the petitioners on abundant evidence by the District Court in its findings of fact (A 407-10) and the District Courts findings were found by the C. C. A. to be sustained by ample evidence.

(5) The bribery of the Superintendent constituted extrinsic fraud which would permit reopening of decrees of dismissal after the term for purpose of ordering redistribution of the amount of rate increase, which had been impounded during litigation. If relief were sought from a fraudulent judgment at law, obviously the proceeding for such relief would have to be by an original bill. But where the proceeding is in the same Court and is directed against a decree in equity, the situation is different because the Court is called to act upon its own earlier action and the original matter is already in equity. In such situations the name or form of the action is not of controlling importance; provided it affords adequate opportunity for interested parties to support and contest the relief sought.— This opportunity includes the necessary elements of due process, such as sufficient notice, production of evidence and proper hearing in other respects. Where these essentials have been preserved, procedure by motion has been approved.

In *The Bank of the United States vs. Moss*, et al., 47 U. S. 31, this Court said: (l. c. 39).

> "Besides these remedies, judgments entered up by fraud may, perhaps, on due notice, by scire facias, or otherwise, be vacated at a subsequent term by the same Court, or if offered in evidence be deemed a nullity, should fraud be clearly proved to have taken place."

In *United States, ex rel., Fisher vs. Williams*, 67 F. 384 (C. C. A. 8) the Court said: (l. c. 386).

> "We are of the opinion that where, by a mistake of the judge, induced by erroneous statements of counsel, a decree has been entered of record, which the judge did not examine or approve, and did not intend to enter, such decree may be set aside, on motion, after as well as before the expiration of the term."

Of like effect:

Fisher vs. Simon, et al., 67 Fed. 487;
United States vs. Sterling, 70 F. (2d) 708, 711, (C. C. A. 2) certiorari denied sub. nom. Commercial Trust Company vs. United States, 293 U. S. 584;
In re New England Oil Refining Co., 9 F. (2d) 344, 346, (C. C. A. 1);
Winslow vs. Staab, 242 F. 426, 431 (C. C. A. 2).

(6) When the fraud upon the Court was called to the attention of the Court by the motion for citation, it then became the duty of the Court to do all within its power to prevent the party fraudfeasors from enjoying any advantage obtained by means of their own wrong by operating on the parties who had committed the fraud in the Court.

United States vs. Williams, 67 Fed. 384, 386, (C. C. A. 8);
United States vs. Sterling, 70 Fed. 708, 711 (C. C. A. 2) certiorari denied, 293 U. S. 584;
In re New England Oil Refining Co., 9 Fed. (2d) 344, 346 (C. C. A. 1);
Winslow vs. Staab, 242 Fed. 426, 431 (C. C. A. 2).

(7) It is only necessary to operate upon the parties benefiting by the fraudulent decree and need not disturb the original judgment or decree.

Marshall vs. Holmes, 141 U. S. 589, 599, 600;
Hanna vs. Brictson M. F. G. Co., 62 Fed. (2d) 139, 148, (C. C. A. 8);

Killean vs. Maryland Casualty Co., 112 Fed. (2d) 940, 944, (C. C. A. 10);
Neblett vs. McFarland, 92 U. S. 101;
Callner vs. Greenberg, 376 Ill. 212, 33 N. E. 437, 134 A. L. R. 1485;
United States vs. Thogmartin, 98 U. S. 61.

(8) There is no conflict between the holding of the C. C. A. in this case and the holding of this Court in United States vs. Morgan, 307 U. S. 183. The chief question in the Morgan case related to the power of the Secretary of Agriculture to make an order reducing stockyard rates at Kansas City, effective from the date of an original order, which original order in an injunction proceeding had been held void because of procedural defects, to prevent the District Court from returning to the stockyard owners and operators funds collected from them under an interlocutory injunction issued by the Court in the proceeding. The secretary was left free, under the mandate of this Court, in its decision affirming the action of the lower Court, in holding that the first order was void, to promulgate a new order.

There are wide divergencies in this and the Morgan case. The Morgan case was a *pending* controversy, kept alive by a motion to stay proceedings, and the extraordinary powers and duties of the secretary under the Packers and Stockyards Act. There had been no voluntary dismissal of the cause upon agreement of the adverse parties at a previous term, as in this case. There was no bribery of one of the adverse parties to procure a settlement and a consent Court decree approving the settlement and dismissing the cause, as in this case. There was no fraud committed upon the Court, as in this case. The Morgan case does not support the position taken by petitioners herein, because the decision of the C. C. A. herein sought to be reviewed is not in conflict with it.

III.

CONFLICT WITH CASES OF OTHER CIRCUITS.

The petitioners claim that this decision in the Eighth Circuit is in conflict with these cases:

Art Metal Works vs. Abraham and Straus, 107 Fed. (2) 944, 70 Fed. (2d) 641;

Hedman Mfg. Co. vs. Todd Protectograph Co., 265 Fed. 273;

Associated Press vs. International News Service, 240 Fed. 983;

Vulcan Detinning Co. vs. American Can Co., 72 N. J. (Eq.) 387 and other cases.

The underlying facts in these cases differ so materially with the facts in these cases at bar, that we can safely contend that no conflicts exist. To begin with, in all the above listed cases, only the acts of mere salesmen and underling agents were involved. The nature of their conduct and representations were not such as could or would attract the attention of, or become known to, the managerial officers of the corporation. No funds of the corporation in those cases, as in this case, were paid out for any purpose, much less large sums, like in this case—paid out without inquiry as to the purposes for which they were to be used. The District Court found (Findings of Fact, IV Rec. A, l. c. 409) that these companies had knowledge of facts which would have put a reasonably prudent person upon inquiry as to the way Street was exercising his power as such agent; and, had reasonably diligent inquiry been made by the companies it would have discovered that Street was using improper means to secure a fraudulent agreement of settlement. Street was found by the District Court (Findings of Fact, VIII, Rec. A., l. c. 409) to be the duly authorized and acting agent of all the companies in procuring the settlement of the suits and that his powers were unrestricted. A cursory reading of the record will not only convince this Court, as it did both the District Court and the Court of Appeals, that this finding is true but that Mr. Street had

absolute charge of the litigation for all the companies and was no mere underling.

There is no conflict, and in our opinion never will be any conflict, with the principle that corporate executives can be held to have implied knowledge of facts brought home to them by refusal to make inquiry which naturally and logically is prompted by known facts.

We submit that decision in this case is not in conflict with any decision cited by the petitioners, and that there is no conflict to justify the granting of the writ of certiorari.

IV.

IMPLIED KNOWLEDGE.

Whatever fairly puts a person on inquiry is sufficient notice where the means of knowledge are at hand; and if he omits to inquire, he is then chargeable with all the facts which by a proper inquiry, he might have ascertained.

The Lulu, 77 U. S. 192: The Supreme Court said in respect to the duty to make inquiry as to the authority of a ship's master to authorize certain repairs on a ship in behalf of the owners, l. c. 201:

> "* * * It is a well-settled law that a party to a transaction, where his rights are liable to be injuriously affected by notice, cannot willfully shut his eyes to the means of knowledge which he knows are at hand, and thereby escape the consequences which would flow from the notice if it had actually been received; or in other words, the general rule is that knowledge of such facts and circumstances as are sufficient to put a party upon inquiry, and to show that if he had exercised due diligence he would have ascertained the truth of the case, is equivalent to actual notice of the matter in respect to which the inquiry ought to have been made.

McClure vs. Township of Oxford, 94 U. S. 429—McClure purchased certain bonds from a Township before the legislative act authorizing the issuance of the bonds became effective. The Court held: (l. c. 432)

> "Every man is chargeable with notice of that which the law requires him to know, and of that which, after being put upon inquiry, he might have ascertained by the exercise of reasonable diligence."

Duncan v. Jaudon, 82 U. S. 165—Jaudon pledged certain stocks belonging to a trust estate, of which he was trustee, to Duncan et al., to procure money for his own purposes. The stocks on their face showed that Jaudon held them as trustee. The court said: (l. c. 175)

> "The duty of making such inquiry was imposed on these parties, for it is out of the common course of business to take corporate stock held in trust, as security for the trustee's own debt. The party taking such stock on pledge deals with it at his peril, and there is no presumption of a right to sell it, as there is in the case of an executor * * * * they either knew, or ought to have known, that Jaudon was operating on his own account, and are chargeable with constructive notice of everything which, upon inquiry, they could have ascertained from the cestui que trust.
>
> "If this inquiry had been pursued they could not have failed to discover the nature and foundation of the trust, and that the trustee had no right to pledge the stock for any purpose."

Other cases on this point are:

National Surety Company v. State Savings Bank, 156 Fed., 21 (C. C. A. 8);

Shell Petroleum Corporation v. Corn et al., 54 Fed. (2d) 767, (C. C. A. 10);

Bank of Havelock v. Western Union Telegraph Company, 141 Fed. 522, (C. C. A. 8);

Angle v. N. W. Mutual, 92 U. S. 330, 342;
Union Guardian Trust v. Schram, 123 Fed. (2d) 579, p. 581;
Mishawaka, St. Joseph Loan and Trust Co. et al. v. Neu, et al., 209 Ind. 433, 196 N. E. 85;
Webb et al. v. John Hancock Mut. Life Ins. Co. et al., 69 N. E. 1006 (Ind. Sup.);
Shaw v. Aaron W. Spencer et al., 100 Mass., 382 l. c. 390;
Geyser-Marion Gold-Min. Co. v. Stark, 106 Fed. 558, l. c. 562.

V.

UNCLEAN HANDS MAXIM.

Under the unclean hands maxim, a party must not only enter a Court of Equity with clean hands but must keep them clean throughout the litigation.

Kem Products Company v. Levin et al., 117 N. J. Eq. 560, 177 Atl., 77, l. c. 79;
Gluck v. Rynda Development Company, 99 N. J. Eq., 788, 134 A, 363-366, affirmed 100 N. J. Eq., 554, 135 A. 917;
Little et al. v. Cunningham et al., 116 Mo. App., 545, 92 S. W., 734, l. c. 736.

Since the bribery of Superintendent O'Malley occurred while the rate cases were pending and were at issue, the above and many other cases which could be cited were clearly applicable. The maxim not only requires that one shall *enter* a Court of Equity with clean hands but he must *keep them clean* during the course of the litigation therein.

The rate suits, in which the funds in question were impounded, were pending and at issue when the Missouri Superintendent of Insurance was bribed to enter into the settlement and procure the entry of the Court decrees of February 1, 1936. By this bribery and the fraudulent procurement of the Court decrees, the petitioners obtained eighty per cent of the impounded funds, procured an ap-

proval by the Superintendent of eighty per cent of the 16-2/3% rate increase and disposed of all the rate suits. Now petitioners by their petition herein are seeking to have the decision of C. C. A. reviewed by this Court for the sole purpose of getting these very rate suits reinstated because they say the fraud did not relate to the matter in controversy, and petitioners' equity was not affected thereby. It is inconceivable to us how any wrongdoing on the part of a litigant could more directly relate to a matter in controversy than does the bribery of the Superintendent and the fraud upon the Court in the original rate suits. We cannot believe that the Court will seriously consider petitioners' contentions in this respect. We further believe that it is so clear that petitioners' wrongdoing directly relates to the matter in controversy that we should not burden this Court with further discussion or citation of authorities.

CONCLUSION.

We believe we have fully and effectively shown that each and every question presented and every reason advanced by petitioners for the allowance of the writ is without merit.

We respectfully submit that the Petition for Certiorari should be denied.

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